

BOARD OF DESIGN REVIEW MINUTES

August 8, 2002

CALL TO ORDER: Chairman Stewart Straus called the meeting to order at 6:35 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive

ROLL CALL: Present were Chairman Stewart Straus; Board Members Cecilia Antonio, Hal Beighley, Mimi Doukas and Jennifer Shipley. Board Member Ronald Nardoza was excused.

Senior Planner John Osterberg, Associate Planner Sambo Kirkman and Recording Secretary Sandra Pearson represented staff.

VISITORS:

Chairman Straus read the format for the meeting and asked if any member of the audience wished to address the Board on any non-agenda item. There was no response.

STAFF COMMUNICATION:

On question, staff indicated that there were no communications at this time.

OLD BUSINESS:

CONTINUANCES:

Chairman Straus opened the Public Hearing and read the format of the hearing. There were no disqualifications of Board Members. No one in the audience challenged the right of any Board Member to hear any agenda items or participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda.

A. BDR 2001-0193 - ALLEN BOULEVARD BUS YARD FILL & REMOVAL MITIGATION PLAN

The applicant requests Design Review approval for the removal of asphalt and fill within the southern portion of the subject site, north of Fanno Creek, as well as approval of a mitigation plan for restoration of the same area described above.

The Board of Design Review will review the mitigation plan including proposed landscaping. In taking action on the proposed development, the Board shall base its decision on the approval criteria listed in Section 40.10.15.3.C. The development proposal is located at 10420 SW Allen Boulevard; Washington County Assessor's Map 1S123BB on Tax Lot 00500. The affected parcel is zoned Industrial Park (IP) and is approximately 5.4 acres in size.

Associate Planner Sambo Kirkman presented the Staff Report and discussed the application for approval for the removal of asphalt and fill within the southern portion of the subject site. She mentioned several corrections to the Staff Report, as follows:

- page 11, Criterion (f), should refer to Condition No. 13, rather than 14;
- page 11, Criterion (g), would refer to Condition No. 16, rather than 17;
- page 12, Criterion (g) would refer to Condition Nos. 13 and 16, rather than 14 and 17; and
- page 12, Criterion (h) would refer to Condition Nos. 11 and 17, rather than 12 and 18.

Ms. Kirkman referred to two Memorandums that had been distributed, one from Mike Pruett of *Harper, Houf, Righelis*, dated July 29, 2002, and the second from herself, dated August 7, 2002. She explained that the letter from Mr. Pruett was a response to a letter from Dr. Hal Oien, listed as Exhibit No. 8 within the Staff Report, adding that the letter from staff is a response to that response by Mr. Pruett.

Chairman Straus referred to a document that had just been submitted by Dr. Hal Oien, observing that while he would pass this around for review, a copy would be needed for the official exhibit.

Concluding, Ms. Kirkman recommended approval of the application and offered to respond to questions.

Chairman Straus requested that staff provide a brief summary of what is being proposed, why this has been proposed and the applicable criteria with regard to this proposal.

Ms. Kirkman explained that this proposal involves an area that was filled with asphalt and gravel at the southern portion of the Allen Boulevard Bus Yard Site, which is located within a significant natural resource area. She pointed out that as part of this application, the Beaverton School District is requesting to remove the gravel, asphalt and associated fill as mitigation for the replacement of what had been lost in the past construction on the site during the 1980's and 1990's.

Chairman Straus suggested that this proposal is basically a corrective plan for something that occurred improperly in the past, requesting clarification of whether this proposal results in a change in the number of parking spaces.

Ms. Kirkman explained that the area that is being removed has had parking, although this has not actually been established as parking by the City of Beaverton, adding that this is now considered excess areas.

Chairman Straus requested clarification of whether this project had been proposed voluntarily by the Beaverton School District or is the result of a citation they had received.

Ms. Kirkman stated that she is not aware of any citations.

APPLICANT:

FRANK ANGELO, representing *Angelo, Eaton & Associates*, on behalf of the applicant, the *Beaverton School District*, introduced himself and **MIKE MALONEY**, representing the *Beaverton School District*, emphasizing that this proposal is voluntary on the part of the Beaverton School District. He pointed out that this mitigation plan would enable Tualatin Hills Park & Recreation (THPRD) to complete the Fanno Creek Trail upon receipt of the federal funding in the year 2003.

GARY ALFSON, representing *Harper, Houf Righellis*, on behalf of the *Beaverton School District*, provided a drawing illustrating the proposed mitigation plan, briefly described the site and mitigation proposal and offered to respond to questions.

Mr. Angelo stated that *Tualatin Hills Park & Recreation District* (THPRD) would come in at a later date with a design for the proposed trail, adding that there should be a separate design review process for this trail system.

Ms. Antonio referred to the plants and vegetation shown for this area and questioned whether this would occur with the THPRD process.

Mr. Alfson advised Ms. Antonio that the planting would occur through the THPRD process, adding that further planting is anticipated through to SW Western Avenue. He explained that while THPRD would be responsible for the actual mitigation, the Beaverton School District is providing the easement that would allow for this mitigation.

Chairman Straus requested further information with regard to storm water management and drainage, and specifically the treatment of the water prior to entering the natural area.

Mr. Alfson informed Chairman Straus that there is currently no water quality treatment on the site, adding that this had not been required when the site was originally developed.

Chairman Straus questioned whether this proposal would be in compliance with regulations with regard to *Clean Water Services* and any other obligations.

Mr. Alfson pointed out that the proposal is removing impervious surface area.

Chairman Straus pointed out that he would like to be certain that the finished project upon completion of the proposal would comply with current regulations as stipulated by *Clean Water Services*.

Emphasizing that this involves a big “if”, Mr. Alfson noted that if this parking lot were built at this time it would not comply with *Clean Water Services* regulations, noting that any impervious surfaces that would be created would be required to comply with current standards.

Chairman Straus questioned whether an applicant would be required to upgrade a proposal that would be considered non-conforming to meet applicable standards in order to perform other work on a site.

Ms. Kirkman informed Chairman Straus that *Clean Water Services* has evaluated this proposal and has provided the City of Beaverton with a Service Provider Letter, and pointed out that *Clean Water Services* considers only new impervious surfaces, rather than existing impervious surfaces, when determining if a proposal meets these standards.

Chairman Straus requested clarification of whether any mechanism exists that governs code that would obligate this applicant to take corrective action on a situation that is not compliant.

Ms. Kirkman reiterated that existing impervious surfaces would not be required to meet the same standards as proposed or new impervious surfaces.

Chairman Straus noted that some other jurisdictions do require remedial action on existing and non-compliant impervious surfaces that are related to new proposals that meet certain values or thresholds.

Ms. Kirkman advised Chairman Straus that this situation does not exist within the City of Beaverton.

Ms. Doukas pointed out that these thresholds would mostly involve the number of parking stalls or amount of landscaping within a parking lot, noting that because this proposal is an improvement over an existing condition, it would be pretty harsh to impose additional conditions.

Chairman Straus commented that he wants to be certain that what is being proposed would be considered appropriate under current guidelines.

Mr. Maloney clarified that City Staff and *Clean Water Services* staff are all aware that this particular application is actually a precursor to future redevelopment at this site, adding that it would be necessary for an applicant and a proposal to comply at the time a development application is submitted in the future.

Ms. Shipley questioned whether the Provider Letter submitted by *Clean Water Services* is considered Phase 2.

Observing that this could likely be considered Phase 2, Mr. Maloney advised Ms. Shipley that he would have to review this Provider Letter.

PUBLIC TESTIMONY:

HAL OIEN, Chairman of *The Concerned Citizens of Beaverton*, commended the Beaverton School District for their efforts and expressed his opinion that they should go beyond the scope of the current proposal at this time, rather than in the future. Observing that one of the controversial issues had been resolved, observing that the district had obtained the Storm Water Discharge Permit, as requested. Referring to the *Poorman Douglas* Building, which is a private enterprise to the east of this facility, he noted that they had resolved their issues with their parking space through the installation of a storm water detention plan and storm water treatment plan. He expressed concern that the district might be receiving more consideration than what would be given to private industry, and questioned why they should be permitted to wait to install the necessary detention plan and treatment plan, emphasizing that there is a potential for hazardous waste to be discharged into Fanno Creek. He expressed concern that the oils running off of these swales are entering the creek, adding that this creates an impact upon the water quality of this creek that can and should be mitigated at this time, rather than later. Pointing out that his group fully supports the efforts of the school district in cleaning this site up, he noted that they would just like them to do a better job in less time than has been proposed. Concluding, he offered to respond to questions.

Chairman Straus questioned whether the governing agencies that basically control the requirements for these environmental issues are not taking issue with the phasing of this project, as proposed by the Beaverton School District. He requested clarification of the basis of the *Concerned Citizens of Beaverton* having expectations that these actions would be done on a different schedule than that proposed by the district.

Dr. Oien responded that the answer to this question is clearly unclear, adding that the Department of Environmental Quality (DEQ) provides different information than that provided by the school district.

Chairman Straus noted that there is already a method in effect that would determine whether further mitigation is required.

Dr. Oien agreed, observing that this involves a two-lane road, both of which travel in the same direction, adding that one of these issues is mitigated by the Storm Water Discharge Permit and failure to either comply or submit pollution numbers that exceed the standard. He explained that the second issue involves the fact that the district owns a property that has operated in violation of environmental law for greater than ten years.

Chairman Straus pointed out that the school district is working to correct this violation.

Dr. Oien agreed that the school district is attempting to correct this violation, adding that as part of that correction, they should be encouraged to move forward with the storm water detention treatment in order to eliminate this load on Fanno Creek.

Ms. Doukas advised Dr. Oien that encouraging the district to take this action is basically all that can be done at this time, observing that the Board of Design Review only has the authority over a very limited amount of criterion and that they do not have the authority of going beyond these limits.

Dr. Oien stated that he is aware of the limited authority of the Board of Design Review, observing that he is referring to design features that potentially affect these issues.

Chairman Straus pointed out that although this involves design features, it is necessary for an applicant to be obligated to provide these features before the Board of Design Review has the authority to actually review them as design features.

Dr. Oien stated that he is not certain of whether any requirement does or does not exist when the information is not available.

Chairman Straus emphasized that it is not possible to impose conditions on a proposal without any evidence indicating that the proposal does not meet applicable criteria.

Dr. Oien expressed his opinion that a private industry would not be allowed to complete this proposal in phases, emphasizing that they would be required to address the entire scope of the project immediately and appropriately. He pointed out that particular attention should be paid to the Beaverton School District's history of non-compliance. He emphasized that he had provided photographic evidence with regard to the pollution that exists on the site.

Chairman Straus noted that Beaverton code requires screening and containment of materials that are stored on site, adding that if there is an issue of non-compliance, the Board of Design Review might have an opportunity to impose corrective action upon the applicant.

Ms. Kirkman pointed out that while the Board of Design Review does have the opportunity to consider issues such as outside storage, it is necessary to also consider the proposal itself. She emphasized that this proposal is a mitigation plan involving the removal of asphalt and gravel from the site and does not identify any issues with regard to outside storage, adding that any such violation does not directly involve this proposal and should be addressed as a code service violation.

Expressing his agreement with staff's comments, Dr. Oien noted that this letter clearly states that in order to comply with *Clean Water Services* and the school district's water quality protection requirements, the project must comply with certain conditions, adding that he has provided photographic evidence of non-compliance.

Ms. Kirkman explained that the applicant would obtain a Site Development Permit providing *Clean Water Services* with an opportunity to discuss these issues with the City of Beaverton's site development engineers.

Chairman Straus requested clarification that even if the Board of Design Review does not consider it within their jurisdiction to obligate the applicant to address these situations, the Engineering Department has the authority to impose these requirements through the Facilities Review and the Site Development Permit processes.

Agreeing that this is potentially possible, Ms. Kirkman pointed out that this land use aspect is considered very specifically, adding that any code violations would be reviewed by *Clean Water Services*.

Chairman Straus stated that theoretically, the Board of Design Review has the authority to approve this application without addressing these specific issues, would be addressed during the Site Development Permit portion of the process prior to any construction. He pointed out that there are two other avenues that Dr. Oien could pursue that would be more appropriate to address these issues.

Dr. Oien disagreed with Chairman Straus.

Chairman Straus emphasized that Dr. Oien has the option of exploring the other methods of addressing the issues he had expressed.

Dr. Oien explained that there are basically two issues, specifically the illegal storage of hazardous waste outside without containment, and the oil discharge

onto the surface of this property and spilling into Fanno Creek, emphasizing that both of these issues could be addressed through design issues.

Chairman Straus reiterated that the applicant would be required to address these issues through the Site Development Permit process, rather than through the Board of Design Review.

Dr. Oien questioned whether the Site Development Permit process would require the approval of the Board of Design Review.

Chairman Straus advised Dr. Oien that the Board of Design Review would review any change in the design of the project, with the exception of a Type 1 Design Review, which would be addressed by staff.

Ms. Kirkman referred to the Facilities Review Conditions of Approval, specifically Section b.8, observing that Condition of Approval No. 8 provides that the applicant shall submit a copy of issue permits or other approvals needed for the *Clean Water Services* district prior to the issuance of the Site Development Permit, emphasizing that this provides the opportunity for *Clean Water Services* to review the application and determine whether all applicable conditions are being met. She pointed out that Mr. Oien's concerns are all issues that are under the jurisdiction of *Clean Water Services*.

APPLICANT REBUTTAL:

In response to a comment by Dr. Oien, Mr. Maloney clarified that the Beaverton School District does not receive any special consideration beyond that given to any other applicant, pointing out that DEQ had affirmed that the empty antifreeze drums do not constitute hazardous materials. Observing that the full containers are stored inside the building and are not in violation of DEQ regulations, he emphasized that this site involves an Industrial Park zone and with industrial use.

Dr. Oien requested the opportunity to make an additional comment.

Chairman Straus advised Dr. Oien that he has had his opportunity to testify.

Ms. Kirkman referred to the *Poorman Douglas* site and noted that the storm water facility was required since this site was requesting new impervious surfaces with the expansion of their parking area, observing that no facilities had been reviewed with regard to the school district's site. She pointed out that this application is strictly a mitigation plan and that the proposal involves only improvements to the site.

Chairman Straus requested information with regard to an approximate time frame for the mitigation that would be provided by THPRD.

Mr. Angelo advised Chairman Straus that it is anticipated that the funding for this mitigation would be received in October of 2003, adding that the mitigation should be completed by the summer of 2004, and emphasized that this action would involve a separate review.

Ms. Antonio requested clarification of the status of this site following the removal of the asphalt and gravel and prior to the mitigation efforts of THPRD.

Mr. Maloney informed Ms. Antonio that when the asphalt is removed, temporary planting would be provided until the time when THPRD completes the proposed mitigation, adding that it had not been originally anticipated that THPRD and the school district would be operating under different funding cycles.

Mr. Alfson clarified that THPRD would physically perform the plantings, observing that there is currently a funding issue.

Ms. Doukas pointed out that the Board of Design Review is concerned with the possibility that the site would remain bare for a period of time until the funding becomes available, emphasizing that no interim plan has been submitted.

Mr. Maloney explained that if the asphalt were actually removed prior to the application for the development of the trail, the applicant would be required by *Clean Water Services* to provide some type of planting, emphasizing that bare ground would not be permitted.

Ms. Kirkman referred to page 14 of the Staff Report, requesting that Condition of Approval No. 12 be revised, as follows:

12. Design Review approval shall be void after two years from the date of approval unless a ~~building~~ **site development** permit has been issued and substantial construction pursuant thereto has taken place.

Chairman Straus pointed out that Condition of Approval No. 14 is not relevant.

Ms. Kirkman suggested the deletion of Condition of Approval No. 14.

Chairman Straus questioned whether lighting has been proposed with regard to this proposal.

Ms. Kirkman explained that the applicant has proposed to relocate the existing lighting.

The public portion of the Public Hearing was closed.

Mr. Beighley **MOVED** and Ms. Doukas **SECONDED** a motion for the approval of BDR 2001-0193 – Allen Boulevard Bus Yard Fill & Removal Mitigation Plan

Design Review, based upon the testimony, reports and exhibits presented during the public hearings on the matter and upon the background facts, findings and conclusions found in the Staff Report dated August 1, 2002, including Conditions of Approval Nos. 1 through 17, modifying Condition of Approval No. 12, as follows:

12. Design Review approval shall be void after two years from the date of approval unless a ~~building~~ **site development** permit has been issued and substantial construction pursuant thereto has taken place.

and deleting Condition of Approval No. 14.

The question was called and the motion **CARRIED** by the following vote:

AYES:	Antonio, Beighley, Doukas, Shipley and Straus.
NAYS:	None.
ABSTAIN:	None.
ABSENT:	Nardozza.

NEW BUSINESS:

PUBLIC HEARINGS:

A. BDR 2001-0215 – SALEM COMMUNICATIONS BROADCAST TOWER TYPE 3 DESIGN REVIEW

The proposed development is generally located west of SW Oleson Road and east of SW Scholls Ferry Road on the north side of SW Vermont Street, and is specifically identified as Tax Lot 4000 of Washington County Tax Assessor's Map 1S1-13DC. The affected parcel is zoned Urban Standard Density (R-7) and totals approximately 12.8 acres in size. The applicant requests Design Review approval for the construction of a second AM radio broadcast tower, approximately 260 feet in height, upon the subject site, to be located approximately 290 feet west of the existing tower. The proposal includes the tower and related equipment and landscape mitigation for any potential impacts.

Mr. Beighley **MOVED** and Ms. Doukas **SECONDED** a motion that BDR 2001-0215 – Salem Communications Broadcast Tower Type 3 Design Review be continued to a date certain of October 24, 2002.

The question was called and the motion **CARRIED**, unanimously.

APPROVAL OF MINUTES:

The minutes of July 11, 2002, as written, were submitted. Chairman Straus asked if there were any changes or corrections. Ms. Doukas **MOVED** and Mr.

Beighley **SECONDED** a motion that the minutes be adopted as written and submitted.

The question was called and the motion **CARRIED** unanimously.

The minutes of July 25, 2002, as written, were submitted. Observing that he had been the only Board Member present at this meeting that occurred solely for the purpose of continuing a Public Hearing, Chairman Straus accepted the minutes as written and submitted.

MISCELLANEOUS BUSINESS:

The meeting adjourned at 7:36 p.m.